

Abolishment of wealth tax in Spain and possibilities to reclaim overpaid capital gains tax

We would like to bring to your attention the possibility for non-residents to reclaim from the Spanish Tax Authorities past capital gains tax paid in Spain; the announcement to abolish of the wealth tax levy made by the new government of Mr. José Luis Rodríguez Zapatero; and some comments about the future of inheritance tax.

Claiming against the Spanish government for overpaid capital gains tax

We refer to several publications released by the press about the tax reclaim in Spain for those who paid capital gains

tax before December 2006.

The European Commission opened two infringement procedures against Spain in 2005 and 2006 for failing to comply with a European Court of Justice (ECJ) resolution on capital gains tax. The ECJ resolved that Spain violated the principles of free provision of services and of free movement of capital and persons by maintaining a less favourable tax regime on capital gains. In November 2006, the Spanish government approved a tax reform reducing the capital gains tax rate for residents and non-residents from 35% to 18%. The above-mentioned procedures were filed and



Author Santiago Lapausa, Senior Tax Advisor, JC&A Abogados, Marbella.

closed on March 21, 2007.

The European Commission continuously sends formal re-

quests to CEE members to introduce amendments according to European directives and provisions. If any members fail to do so, they are referred to the European Court of Justice. Although Spain amended the discriminatory rules on capital gains tax and the proceedings were closed, the fact is that Spain contravened European Community Treaty discrimination rules until December 2006, and it is possible to reclaim overcharged tax paid from the Spanish Tax Authorities.

Due to this discrimination, non-residents were obliged to pay 35% on any capital gain obtained in Spain while resi-



dents enjoyed a 15% tax rate for gains made within more than one year. Reclaiming means the possibility of being refunded the 20% overcharged. Nevertheless, and having studied the pros and cons of this possibility, each case must be analysed separately, as the first reaction of the Spanish Tax Authorities would most likely be to start an inspection and revision of the transaction, which could change matters.

As a way to enhance the cooperation, the exchange of useful fiscal information amongst members of GGI, and to add value to the services you provide, we invite those members who may have clients who sold a property in Spain between June 2004 and December 2006, to discuss this matter with us, so that we can check the possibilities of succeeding in a potential reclaim of the capital gains tax that said clients may have paid in excess.

Should you need further information about this matter please feel free to contact us at the address stated at the end of this report.

Abolition of Wealth Tax

Last April 18 the Spanish government approved a package of measures to reactivate the economy, which included a deduction of €400 on personal income tax for employees, self-employed persons and pensioners; the possibility for families to increase the mortgage repayment period in the following two years at no cost, and the abolishment of the wealth tax levy as from January 1, 2008.

Nevertheless, Royal Decree

2/2008 of April 21 implementing the measures does not make any reference to wealth tax. We will have to wait for a new rule to implement this specific measure but in the meanwhile would like to offer our particular opinion about it.

It is not clear whether the Spanish government is going to abolish the tax or just the levy on the tax. The main purpose of wealth tax is to control the assets and liabilities of individuals and compare that with personal income tax in a way that any increase in net wealth should be justified from the income tax. This is why the creation of a null-rate tax would make sense.

Looking at other CEE members, we note that only France, Sweden, Switzerland and Norway maintained this tax in 2007, reducing our competitiveness in this respect. Moreover, the wealth tax rates in Spain are higher, with a maximum of 2.5% at the top range, compared to the average of 1.8% in the rest of the countries.

Wealth tax is yielded in favour of the Autonomous Government, in our case the "Junta de Andalucía." The reduction in tax collection, estimated at €1,800 million, will have to be compensated in some way by the central government. Therefore, it is not just a matter of deciding to abolish the tax but to study and implement alternative compensations for the Autonomous Government.

Notwithstanding the above, we would like to comment that prudence is necessary when discussing taxes. Despite the idea that the tax situation for any European indi-

vidual should be the same in every European country, the reality is that in Spain different laws apply to residents and non-residents. In this respect, Spanish residents should pay wealth tax on the net worldwide wealth, with a general allowance of the first €108,182.18, and an allowance for the main home up to €150,253.03. These allowances do not apply to non-residents.

Thus, it is not sensible to state that wealth tax will be paid for 2007 for the last time for everyone until the measure is duly implemented.

Looking at Inheritance Tax

Inheritance tax is another of the taxes yielded to the Autonomous Governments, together with transfer tax and stamp duty. Changes in inheritance tax have already been implemented in some regions, mainly increasing the deductions applicable. Leading the way, Madrid residents could be exempt from paying inheritance tax. The regional Andalusian government has produced some radical changes for tax residents in the region when their beneficiaries are relatives such as a spouse, children or parents, which may imply that no inheritance tax is payable. To be eligible, each of the above beneficiaries (who must be resident in Andalusia and registered at a local town hall) should inherit less than €125,000 from the estate and have existing wealth of less than €402,000. Last June 4th, the Andalusian government approved a Royal Decree to reactivate the local

economy, increasing the limit to €175,000, and applying a reduction of 99% of the taxable base for money donated to people under 35 years old for the acquisition of their main home, with a limit of €120,000.

Further reductions refer to the "habitual residence" of the deceased when the beneficiaries are the spouse, parents or an uncle or cousin (the latter being over 65 years of age and having lived in the house for 2 years prior to the death). If so, there is a 99.99% reduction, provided the beneficiary keeps the house for at least 10 years and their share in the estate does not exceed €122,606.47.

To benefit from the new regulations it is necessary to prove that both the deceased and the beneficiaries of the deceased are registered at the local town hall and to produce their Spanish residence cards. Failure to do so will result in the deceased being treated as non-resident in Spain.

Contact

JAVIER CARRETERO & ASOCIADOS



abogados

JC&A Abogados

Jacinto Benavente 11, 3º -2
Edif. Marbeland
29601 Marbella
Tel.: (+34) 952 924 656
Fax: (+34) 952 864 162
info@jca-abogados.com
www.jca-abogados.com

The material set out herein is for information purposes only and does not constitute legal or professional advice. No responsibility will be accepted for loss caused directly or indirectly as a result of acting in reliance upon information contained herein.